APPENDIX A — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION DATED OCTOBER 24, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 3:01CV7452

Cindy L. Naething,

Plaintiff

-v.-

LEE Covington, et al.,

Defendants

ORDER

This is a pro se § 1983 and § 1985 case arising from plaintiff's contention that she is the beneficiary of two life insurance policies issued by the defendant American General Life & Accident Insurance Company. She claims, inter alia, that the state defendant, the Ohio Department of Insurance (sued through its Director, Lee Covington), conspired with American General, and has deprived her of certain unspecified civil rights.

Pending are motions to dismiss filed by both defendants. For the reasons that follow, the motions shall be granted.

Appendix A

Plaintiff is convinced she is the beneficiary of the two policies. She has been unable to procure copies of the polices from the defendant insurance company. She filed and lost an action for discovery in the Richland County, Ohio, Court of Common Pleas. Her appeal from that decision was dismissed as untimely. She here seeks to relitigate issues decided in that case. In view of the former, adverse decision, she cannot do so under the doctrines of collateral estoppel and res judicata.

In any event, her complaint against the insurance company is barred by the statute of limitations. She was aware of her potential claim by the end of 1992, at the latest. This case was filed nearly nine years later. The statute of limitations is two years in a civil rights case. *Browning v. Pendleton*, 869 F.2d 989, 992 (6th Cir.1989).

Finally, and in any event, the defendant insurance company is not a state actor. Thus, it cannot be sued under § 1983.

The state defendant seeks dismissal on the doctrine of sovereign immunity. That argument need not be addressed because defendant's alternative argument — that the plaintiff's complaint fails for want of specificity to state a claim — is well taken. Her allegations of misconduct and conspiracy are entirely conclusory, and thus is insufficient. *See, e.g., Gutierrez v. Lynch*, 826 F.2d 1534, 1538 (6th Cir.1987) ("conspiracy claims must be pled with some degree of specificity and . . . vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983"). Moreover, even read most broadly in her favor, the plaintiff's allegations fail to show that any right protected under the Constitution and laws of the United States has been violated.

In light of the foregoing, it is

ORDERED THAT the motions of the defendants for dismissal be, and the same hereby are granted; plaintiff's motion to compel dismissed as moot.

So ordered.

/s/ James G. Carr
James G. Carr
United States District Judge

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED AND FILED AUGUST 20, 2003

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 01-4189

CINDY L. NAETHING,

Plaintiff-Appellant,

v.

LEE COVINGTON, Director, Ohio Department of Insurance; AMERICAN GENERAL LIFE AND ACCIDENT COMPANY,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Before: GILMAN and GIBBONS, Circuit Judges; and JORDAN, District Judge.*

PER CURIAM. Cindy Naething filed an action under 42 U.S.C. § 1983 against American General Life and Accident Insurance Company ("AGLA") and Director Lee Covington ("Director Covington") of the Ohio Department of Insurance

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* The Honorable Leon Jordan, United States District Judge for the Eastern District of Tennessee, sitting by designation.

claiming entitlement to proceeds from life insurance policies issued to Martin Hampton and seeking production of the policies and related canceled checks. Prior to filing her complaint in district court, plaintiff filed an action in Ohio state court seeking discovery and claiming benefits under the policies. The Ohio court ruled in 1995 that plaintiff had received all the discovery to which she was entitled and that she was not entitled to benefits under the insurance policies. Plaintiff filed her complaint in district court on August 28, 2001. Defendants each filed a motion to dismiss. The district court granted both motions. It held with regard to AGLA that the complaint was barred by the applicable statute of limitations and that AGLA is not a state actor and therefore cannot be sued under § 1983. As to Director Covington, the district court held that the complaint failed for want of specificity to state a claim because plaintiff's allegations of misconduct and conspiracy were conclusory and thus insufficient. The court further held that the complaint failed to sufficiently allege that a right protected under the Constitution or laws of the United States had been violated, a requirement for a § 1983 action.

For the reasons articulated by the district court, we agree that the claims against AGLA are barred by the statute of limitations and that because AGLA is not a state actor, a claim under § 1983 can not stand. We further agree with the district court that the claims against Director Covington fail for a lack of specificity and that the complaint fails to allege sufficiently that a right protected under the Constitution or laws of the United States has been violated. Having studied the record on appeal and the briefs of the parties, we are not persuaded that the district court erred in dismissing plaintiff's

case. Because the district court fully articulated its reasons for dismissal, the issuance of a detailed opinion by this court would be duplicative and serve no purpose. Accordingly, we affirm the judgment of the district court upon the reasoning set out by the court in its opinion and order entered October 24, 2001.